Decision **PROPOSED DECISION OF ALJ MILES (Mailed 8/12/2015)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Approval of Demand Response Programs, Goals and Budgets for 2009 - 2011.	Application 08-06-001 (Filed June 2, 2008)
And Related Matters.	Application 08-06-002 Application 08-06-003

DECISION DENYING THE PETITION FOR MODIFICATION FILED BY SAN FRANCISCO COMMUNITY POWER

Summary

This decision denies the petition of San Francisco Community Power to modify Decision 09-08-027 to waive penalties associated with its participation in Pacific Gas and Electric Company's 2010 demand response program.

Application (A.) 08-06-001, A.08-06-002 and A.08-06-003 remain open to consider the July 5, 2012, petition for modification filed by PureSense Environmental Incorporated.

1. Background

In Decision (D.) 09-08-027, the Commission established demand response activities and budgets for Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company (PG&E) for 2009 through 2011. When activated, demand response programs require participating

customers to curtail their load in the event of a forecasted or actual system emergency.

Under PG&E's Capacity Bidding Program (CBP), participating customers commit to providing varying amounts of load reduction, and receive capacity payments for the elected amount of load reduction, as well as an energy payment based on the kilowatt-hour reduction during a called event. Parties that do not deliver at least 50% of their elected load reduction under this program are subject to penalties.[1]

San Francisco Community Power (SF Power) was approved to act as a demand response aggregator through the PG&E CBP in 2010. PG&E imposed penalties of $96,660.64 on SF Power for failing to deliver the amount of demand response SF Power committed to provide through the program associated with its participation in PG&E's 2010 demand response program. On January 25, 2011, SF Power filed a petition to modify D.09-08-027[2] to request that the Commission waive collection of the penalties.

2. Parties' Positions

2.1. SF Power

SF Power requests to be relieved of penalties because it claims that the penalties were triggered as a result of a change in the way PG&E calculated

[1] See Section 10.2.2 of D.09-08-027 at 47.

[2] D.09-08-027 was issued August 24, 2009. Rule 16.4(d) requires a petition for modification to be filed and served within one year of the effective date of the decision it proposes to modify unless the petition could not have been presented within one year. SF Power contends that it could not have filed the petition for modification by August 24, 2010 because evaluation of its compliance with baseline requirements under which the penalties were triggered (which were established under tariff requirements approved in D.09-08-027), could not occur until well after the end of the summer of 2010. SF Power states a reasonable basis for the late filing, and the Commission appropriately accepted its Petition for filing.

baseline electricity use by small commercial customers.[3] In addition, it claims that severe weather conditions during the summer of 2010 made it extremely difficult for SF Power's small commercial customers to effectively respond to demand response curtailment. It says that it was difficult for it to properly adjust its nominations because transfer of performance data information was slow and were not typically available until 60 or more days after an energy alert.[4]

SF Power argues that it is entitled to special consideration because it is the only nonprofit aggregator whose goal is to service commercial class customers. It claims that its ability to absorb penalties, if imposed, will be impeded because it does not have profits or deep pocket investors to turn to in order to satisfy payment of the penalty.

After filing the Petition ~~for Modification~~, SF Power voluntarily suspended its aggregator activities,[5] although it continues to provide energy management assistance to low-income families and small businesses.

2.2. PG&E

PG&E says that it is seeking the penalties on behalf of its ratepayers, who should be properly compensated for the underperformance of a contracted third party such as SF Power. PG&E argues that SF Power's failure to meet the agreed

[3] Between 2006 and 2009, PG&E calculated electricity use reductions based on the three highest electricity use days between 11 a.m. and 7 p.m. out of the ten non-holiday weekdays prior to a curtailment call (referred to as "3-10 baseline"). In 2010, the baseline method was changed and was based on the average use for each hour on the immediate prior ten non-holiday weekdays prior to a curtailment call (referred to as "10-10 baseline"). SF Power claims that this change resulted in lower estimated load curtailments by SF Power's small and medium sized commercial customers. (See page 3 of SF Power Petition for Modification (Petition).)

[4] See SF Power Petition ~~for Modification~~ at 5.

[5] See Response of SF Power dated March 9, 2012 at 2. Customers previously served by SF Power have been transferred to Comverge, a national DR provider.

load reduction was due to factors within SF Power's control and that SF Power had been given reasonable opportunity to perform successfully.[6]

PG&E asserts that SF Power understood the challenges and risks of demand response programs for small and medium sized customers because SF Power had been enrolled in the Small Commercial Aggregation Pilot Program (SCAPP) since 2006.[7] Under the SCAPP, PG&E paid SF Power to market demand response programs to small- and medium-sized commercial customers (those using less than 200 kW) and to ensure that its customers reduced usage by two megawatts by the end of 2008. PG&E also paid for installation of interval meters for the customers.

As further proof that SF Power understood the challenges and risks of demand response programs, PG&E points out that when the Commission required it to evaluate SF Power's participation in the SCAPP pilot at the end of 2008, and PG&E proposed discontinuation of SF Power as an aggregator[8] SF Power filed a complaint against PG&E to require continuation of the pilot.[9] By the end of 2010, the first year under the new baseline, SF Power achieved lower load but did not meet the performance requirements.[10] PG&E argues that this demonstrates that SF Power would have failed to meet the performance

[6] See Response of PG&E to Petition for Modification of Decision 09-08-027 of SF Power dated February 24, 2011 (PG&E 2-24-11 Response) at 7.

[7] PG&E 2-24-11 Response at 2.

[8] PG&E filed Application 08-06-003 to discontinue SCAPP based on low performance, because SF Power customers had only been able to achieve a total load reduction of 1.4 megawatts (MW), out of a target 5 MW. (See D.09-08-027 at 182, "22.1.1 Small Commercial Aggregation Pilot - Pilot Background.")

[9] In its Complaint (Case 08-10-015), SF Power proposed a budget of $675,000 and required PG&E to install more interval meters. PG&E and SF Power settled the complaint. Their settlement was approved by the Commission in D.09-08-027.

[10] PG&E states that in 2009, SF Power participated in only one two-hour event under the 3-10 baseline. In 2010, there were nine events. PG&E states that SF Power did not meet its nomination during 2010, even if measured by the 3-10 baseline. (PG&E 2-24-11 Response at 6 and 8.)

requirements whether they had been measured by the prior 3-in-10 or the new 10-in-10 baseline.[11]

PG&E disputes SF Power's claim that there was slow transfer of performance data and that this impeded SF Power's ability to make adjustments in its nominations. PG&E states that SF Power had the same access to meter data as all other aggregators enrolled in the CBP and that the way that it provided data to aggregators did not change under the new baseline.[12] While it agrees that final settlement calculations were provided 60 days after the end of the participation month, PG&E says that raw data was available to aggregators five to ten business days after an event.[13]

PG&E argues that SF Power should be held accountable for the failure of its customers to reduce load because SF Power had knowledge which would have permitted it to take action. For instance, PG&E argues that, as a result of the interval meters, SF Power had access to customer meter data that demonstrated that its customers were delivering less than 50% of the load reduction. Yet, SF Power continued to nominate or promise more load reduction than it could deliver. PG&E argues that SF Power cannot claim that it didn't know this, because many load reduction events were called in 2010. Therefore, PG&E claims, SF Power had many occasions to test customer performance.[14]

PG&E points out that it was the Commission which determined that the 10-in-10 baseline with a day of adjustment would be more accurate than the 3-in-10 baseline previously in use for demand response programs. All participants in the PG&E demand response programs in 2010 were required to adapt to the new baseline methodology. For this reason, PG&E argues that SF

[11] PG&E 2-24-11 Response at 5.
[12] PG&E 2-24-11 Response at 2.
[13] PG&E 2-24-11 Response at 9.
[14] *Id.*

Power's failure to achieve reduction cannot be accounted for simply by the change in methodology.[15] In any event, PG&E points out that SF Power was well aware of the changes that occurred to methodology.[16] PG&E states that, if the Commission chooses to relieve SF Power of its penalty obligations the Commission should no longer allow SF Power to continue as an aggregator.[17]

3. Standard of Review

The penalty structure for non-performance under the CBP is set forth in PG&E's Electric Schedule E-CBP. All third-party demand aggregators are held to the Commission-approved structure found there.[18]

Section 453 of the Public Utilities Code prohibits public utilities from granting preference or advantage as to rates, charges, service, facilities or in any other respect.[19]

4. Discussion

Although SF Power claims that its status as a nonprofit entity entitles it to additional consideration beyond that given to other aggregators, we are not convinced that this is the case. SF Power was given the same incentives and payments that other providers were given under the program. There were other demand response aggregators who were assessed penalties for the 2010 season due to failure to meet the program obligations.[20] SF Power has not provided any

[15] PG&E 2-24-11 Response at 4.
[16] PG&E notes that SF Power had knowledge of the adjustments adopted in D.09-08-027 because it was an Intervenor in the case. See PG&E 2-24-11 Response at 4 and fn 10.
[17] PG&E 2-24-11 Response at 11.
[18] Advice Letter No. 3560-E-B, Decision D.09-08-027 "Billing Disputes Cal. P.U.C. Sheet No. 29541-E) effective date May 1, 2010, filed June 24, 2010.
[19] § 453(a) "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person, or subject any corpo ration or person to any prejudice or disadvantage."
[20] PG&E Comments on ALJ Hecht's Ruling Requesting Updated Information from SF Power and PG&E dated March 9, 2012 (PG&E 3-9-12 Comments).

evidence of why it should be treated differently for its failure to meet the program obligations.

We find convincing PG&E's argument that SF Power had the same access to information as other aggregators enrolled in the CBP and that the change in baseline methodology alone, does not account for SF Power's failure to deliver its load reduction nominations. PG&E provides convincing information that SF Power would not have met its load reduction nomination during 2010 even if its performance had been measured under the 3-in-10 baseline methodology.[21]

In its response to the Administrative Law Judge's (ALJ) November 14, 2014 ruling requesting a brief narrative of efforts that have been undertaken by the parties to resolve the penalties, PG&E provided a declaration by a board member of SF Power, indicating that SF Power currently has no paid staff, is largely inactive, and that the board did not meet in 2014 or engage in any significant activities since 2010.[22] This confirms that SF Power is no longer eligible to serve as an aggregator. Therefore, the penalty will not impede its ability to serve as an aggregator.

We find no basis to grant SF Power's Petition ~~for Modification~~.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code on ~~_____~~August 12, 2015, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were received on ~~_____~~.August 31, 2015 from SF Power. Reply comments were received from PG&E on September 6, 2015.

[21] See PG&E 2-24-11 Response at 5-6.

[22] Response of PG&E to the 11-14-14 Ruling of ALJ Miles Concerning the Petition for Modification of Decision 09-08-027 Filed by SF Power (PG&E 12-1-14 Response) at 2.

In its comments, SF Power avers that the Commission should reject the ALJ's Proposed Decision and grant its Petition because of the long delay and passage of time in ruling on its Petition. SF Power contends that this delay has debilitated its ability to respond to the ALJ Miles' Proposed Decision. This argument is not persuasive, even though we may certainly agree that there has been a long delay in acting upon the Petition.

SF Power voluntarily terminated its aggregator activities within a short time after it filed the Petition on January 25, 2011. The record reflects, and ALJ Miles notes in her Proposed Decision that, in its March 9, 2012 response to a prior ALJ's request for additional information, SF Power informed the Commission that it had already suspended its services as a DR aggregator and had already transferred its customers to a national DR aggregator. For instance, the Proposed Decision acknowledges a declaration by SF Power[23] that it has had no paid staff, was largely inactive and that its board had not engaged in any significant activities since 2010. It is rather disingenuous to suggest today that the passage of time impedes SF Power's position, when its position today is the same as it has been since it originally filed its Petition.

From the beginning, SF Power essentially has contended that because it is no longer an aggregator, it is appropriate for the Commission to waive the penalties against it.[24] The ALJ explains that she does not agree. In its Reply, PG&E also agrees that the passage of time should not be a reason for granting the Petition.

PG&E's Reply acknowledges that it believes that it is unlikely that it will ever be able to collect the $96,660 penalty assessed against SF Power for failure to

[23] The declaration was filed by PG&E with its December 1, 2014 Response to the ALJ's November 14, 2014 ruling requesting information about recent efforts that the parties may have taken to resolve the penalties.

[24] *See* SF Power March 9, 2012 Response at 4.

perform under its demand response contract. Any failure to collect from SF Power is partially PG&E's own responsibility as it could have and should have made an effort to resolve payment with SF Power short of Commission intervention. Although PG&E explains that it did not feel that SF Power was entitled to receive different treatment from other aggregators, there is no satisfactory explanation in the record about why the parties did not attempt informal resolution.

The Commission will not relieve SF Power of its obligation to pay a penalty to PG&E, but we will permit PG&E to decide whether it is feasible for it to engage in collection activity against SF Power in view of its inactive status since 2010.

6. Assignment of Proceeding

Michel P. Florio is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

Findings of Fact

1. SF Power was approved to act as a demand response aggregator through the PG&E CBP in 2010.
2. SF Power did not deliver the amount of power reduction that it committed to provide through the program.
3. The penalty structure for non-performance under the CBP is set forth in Schedule E-CBP. All third-party demand aggregators are held to the Commission-approved structure.
4. Section 453 of the Public Utilities Code prohibits public utilities from granting preference or advantage as to rates, charges, service, facilities or in any other respect.

5. SF Power had the same access to meter data as all other aggregators enrolled in the CBP.

6. SF Power has presented no evidence demonstrating that its status as a nonprofit entitles it to be treated differently than other aggregators.

7. SF Power has discontinued aggregator activities and is ineligible to continue participation in the CBP.

Conclusions of Law

1. Section 453 of the Public Utilities Code prohibits public utilities from granting preference or advantage as to rates, charges, service, facilities or in any other respect.

2. It is appropriate for PG&E to seek a penalty of $96,660.64 for nonperformance under the CBP from SF Power.

3. SF Power is not entitled to special treatment because it is an aggregator that is a nonprofit.

4. SF Power has not demonstrated any basis for modifying D.09-08-027.

5. The Petition for Modification of D.09-08-027 filed by SF Power should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition of San Francisco Community Power to Modify Decision 09-08-027 is denied.

2. Applications (A.) 08-06-001, A.08-06-022, and A.08-06-003 remain open to consider the July 5, 2012 Petition for Modification filed by PureSense Environmental, Inc.

This order is effective today.

Dated_____ at San Francisco, California.

Document comparison by Workshare Compare on Thursday, September 10, 2015 12:18:52 PM

Input:	
Document 1 ID	file://d:\jt2\Desktop\A0806001 et al. Miles Comment Dec 5-28-15.docx
Description	A0806001 et al. Miles Comment Dec 5-28-15
Document 2 ID	file://d:\jt2\Desktop\A0806001 et al. Miles Agenda Dec Rev. 1 5-28-15.docx
Description	A0806001 et al. Miles Agenda Dec Rev. 1 5-28-15
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	16
Deletions	6
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	22